CHIA.
center
for health
information
and analysis

September 15, 2014

Via Facsimile (617) 722-0184

The Honorable Janet L. Sanders
Attn: Antitrust Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

RE: *Commonwealth v. Partners HealthCare System, Inc., et al.*, Suffolk Superior Court, Civil Action No. 14-2033-BLS

Dear Judge Sanders:

Attached please find the Center for Health Information and Analysis Comments on Proposed Final Judgment by Consent.

Sincerely,

Áron Boros
Executive Director

TWO BOYLSTON STREET
BOSTON, MA 02116

T 617.988.3100
F 617.727.7662

www.mass.gov/chia

Center for Health Information and Analysis
Comments on Proposed Final Judgment by Consent

The Massachusetts Center for Health Information and Analysis ("CHIA") urges the Court in Commonwealth v. Partners Health Care System *et al.* (Civil Action No. 14-2033 BLS) to require the use of publicly reported performance measures for monitoring Partners Health Care System's ("Partners") compliance with any Final Judgment by Consent ("Consent Judgment") approved in this matter. Publicly reported performance measures can be used to supplement the novel metrics used to evaluate compliance with Price Growth Restrictions detailed in Attachment A of the Joint Motion. Use of publicly reported performance measures supports the legislative goals embodied in Chapter 224 of the Acts of 2012 by increasing transparency in the health care market and encouraging greater consistency and collaboration among the state agencies charged with monitoring health care market participants. Further, public support for the proposed settlement may be enhanced if Partners' compliance with the settlement is not measured solely by novel, non-standard metrics that Partners exclusively and confidentially reports to a compliance monitor.

CHIA defers to the Attorney General, as the state's chief law enforcement officer, to balance the risks associated with litigation against the benefits of the negotiated agreement pending before the Court. CHIA takes no position on the merits of the antitrust allegations or the proposed Consent Judgment and its component restrictions and metrics. As detailed below, these comments primarily concern the exclusive use of the novel Weighted Price Increase and Weighted TME Trend metrics (including component elements) for monitoring compliance with the Price Growth Restrictions defined in the Consent Judgment. Existing and soon-to-be-adopted statewide performance measures, required by statute and developed by CHIA, can supplement

the novel metrics proposed by the parties and provide additional context for effectively monitoring any Consent Judgment.

I. BACKGROUND: CHIA and Standard Statewide Measures

Under G.L. c. 12C, CHIA is charged with collecting, analyzing, and disseminating health care data to support the development of health care policy and to monitor health care trends, particularly health care cost trends. It is with this statutory role in mind, and its extensive experience objectively assessing the performance of Massachusetts healthcare providers,[1] that CHIA recommends the use of publicly reported performance measures as described below.

CHIA was created as a result of Chapter 224 of the Acts of 2012, *"An act improving the quality of health care and reducing costs through increased transparency, efficiency and innovation."* CHIA's primary purposes include collecting data from payers and providers, and developing metrics, analyses, and datasets that allow for system-wide assessment and monitoring. This work is performed pursuant to statutory directives and is achieved through rigorous processes that include the development of regulations and methodologies, and vetting by the market participants whose data is collected and whose performance is examined. The result is a set of standardized metrics that are increasingly useful for improving health care policy and assessing the operations and financial health of payers and providers. Moreover, Chapter 224 encourages collaboration among state agencies (in particular, among CHIA, the Health Policy Commission, and the Attorney General's Office) toward the shared goal of lowering costs and improving health care quality. Specifically, Chapter 12C, §17 provides for the Attorney General's Office to have nearly unfettered access to public and non-public data

[1] CHIA is the successor agency to the Division of Health Care Finance and Policy and, prior to that, the Rate Setting Commission. As such, CHIA and its predecessor agencies have collected and analyzed health care data in the Commonwealth for decades.

submitted to CHIA, suggesting a strong legislative interest in maximizing the use of CHIA's standardized methodologies and metrics whenever appropriate.

Among its duties, CHIA is responsible for calculating and reporting a number of health care market performance measures defined by statute. For the purposes of monitoring the future market activity of a provider system like Partners, two measures, Relative Price (RP) and Total Medical Expenses (TME), are particularly relevant. Since CHIA's TME and RP measures have been collected, vetted, and reported publically for several years, they provide a solid analytical foundation and a point of reference against which the impact of the remedies proposed in the Consent Judgment can be measured.

A. Relative Price (RP)

Relative Price, which is defined in G.L. c. 12C, § 1,[2] is a calculated measure that allows for comparison of the price levels paid to providers within a payer's network for a standard set of insurance products and health care services. RP is standardized so that comparisons are meaningful, even for different mixes of health care services and insurance products, and is adjusted to account for differences in patient volume and acuity. RP data are collected annually from payers, reflect a broad spectrum of health care providers (e.g. hospitals, physician groups, rehabilitation facilities, nursing facilities), and include all payments to providers for services, including claims and non-claims based payments, plus patient cost sharing.

To the extent that negotiated prices are a reflection of market power, RP data may be used to assess the relative market strength of providers within each payer's network, by

[2] G.L. c. 12C §1: "Relative Prices", the contractually negotiated amounts paid to providers by each private and public carrier for health care services, including non-claims related payments and expressed in the aggregate relative to the payer's network-wide average amount paid to providers, as calculated under section 9 and regulations promulgated by the center."

measuring changes in relative price levels, and evaluating such changes in the context of market activity. RP can also be used to evaluate overall variation in market prices.

Under G.L. c, 12C, § 10, CHIA is further required to measure the annual percentage growth of the average relative price by provider type and product type for each payer's participating health care providers, and compare such growth to certain annual inflation and projected economic growth benchmarks. CHIA is currently developing the methodology to implement this requirement.

B. Total Medical Expense (TME)

Total Medical Expense, which is defined in G.L. c. 12C. §1,[3] can be used to measure the total cost of treating patients under a provider's care, and to compare such costs over time and relative to patients under the care of other providers. Payers report TME to CHIA on an annual basis.[4] It represents the full amount paid to all providers for health care services delivered to a primary care physician group's patient panel.[5] In addition, CHIA will be implementing quarterly monitoring of plan- and provider-specific claims expenses in 2015, using separately reported claims data.

[3] G.L. c. 12C § 1: Health status adjusted total medical expenses ("HSA TME") is defined as "the total cost of care for the patient population associated with a provider group based on allowed claims for all categories of medical expenses and all non-claims related payments to providers, adjusted by health status, and expressed on a per member per month basis, as calculated under section 9 and the regulations promulgated by the center." While HSA TME is statutorily defined, CHIA collects both HSA TME and unadjusted TME from the payers.

[4] Health plans and insurers that file TME data are: Aetna Health Insurance Company; Blue Cross Blue Shield of Massachusetts; BMC HealthNet; CeltiCare Health Plan; Connecticut General Life Insurance Company (Cigna); Fallon Health; Harvard Pilgrim Health Care; Health New England; Neighborhood Health Plan (which is owned by Partners HealthCare); Network Health; Tufts Health Plan; UniCare Health Insurance Company; and United Healthcare Insurance Company.

[5] Patient panels are assigned to primary care physician groups by the reporting payers for all HMO members who have selected a primary care physician associated with the physician group.

CHIA's data includes physician group TME for both risk and non-risk contracts, and includes claims and non-claims spending, as well as pharmacy spending. CHIA's data sets also make it possible to calculate physician group TME information for members under PPO-type insurance products where payers have attributed patients to a managing physician group.

C. Other CHIA Data

CHIA also has additional data that may be used to help the Attorney General's Office monitor Partners' compliance with a final consent judgment. These include:

- case-mix adjusted discharge data, which represent information on the cost of delivering care as opposed to the payments received for such care;
- volume information across inpatient and outpatient hospital settings, as well as in non-hospital outpatient settings; and
- standardized financial information associated with hospitals, including consolidated financial statements of multi-hospital health systems.

In future years, CHIA also will collect financial information from Registered Provider Organizations that are required to submit data to CHIA and to the Health Policy Commission as a result of Chapter 224. Registered Provider Organizations will include physician organizations, management service organizations, and other providers that currently do not publically report standardized financial information to any government agencies.

II. Performance Measures in the Proposed Consent Judgment

The proposed Consent Judgment establishes two Price Growth Restrictions: the Unit Price Growth Cap (UPGC) and a TME Growth Cap. The Attorney General's Office will monitor Partners' compliance with these restrictions through a series of metrics, most notably Weighted

Price Increase (WPI) and Weighted TME Trend. The definitions of these metrics make no reference to existing measures used by state agencies to evaluate the health care market.

A. UPGC and WPI

In the proposed Consent Judgment, price increases would be capped by a Unit Price Growth Cap. Performance against the UPGC would be measured using a new metric created by the parties: Weighted Price Increase. WPI is calculated differently from CHIA's statutorily defined Relative Price measure. The parties should use Relative Price data collected annually by CHIA from Massachusetts payers to supplement the use of Weighted Price Increase. Specifically, RP could be used by the parties to monitor changes in the price of Partners' care relative to other providers, and to use such changes as a proxy for the effect of the mergers on competition within the health care market.

CHIA acknowledges that a provider's year-over-year percentage price increases cannot be measured by using RP alone. If this factor is important to the monitoring of the Consent Judgment, other metrics such as the proposed Weighted Price Increase are required. However, use of RP as a supplemental tool would increase the transparency of the monitoring process, provide the compliance monitor with additional tools to evaluate Partners' behavior, and offer an independent consistency check to ensure that Weighted Price Increase as defined in the Joint Motion is accurate and effective for its intended purpose. This last advantage of using RP is particularly important because, unlike RP, WPI has not previously been used to measure performance against goals like those described in the Consent Judgment.

Therefore, the final Consent Judgment should explicitly incorporate Relative Price to supplement WPI and its components. The CHIA Relative Price measure is legislatively

endorsed, was developed through a peer review process, and will better equip the Attorney General's Office to compare Partners to its competitors in the Massachusetts market.

As noted above, CHIA is also implementing additional measures of payer and provider price changes as directed by statute. CHIA would be happy to assist the parties in evaluating the utility of both existing measures and those under development in tracking Partners' performance against the goals outlined in the Consent Judgment.

B. TME Growth Cap and Weighted TME Trend

In the proposed Consent Judgment, certain expenditure growth would be capped by a so-called TME Growth Cap. The cap limits increase in Weighted TME Trend, a metric defined by the parties.

Although the proposed Consent Judgment uses the terms "Total Medical Expense" and "TME," the proposed metrics do not rely on the TME metric defined by Massachusetts law and CHIA regulation and practice. CHIA-calculated TME should supplement the parties' metric because it was developed through an open, transparent process, reflects all commercial business (not just business in certain risk-based contracts), and is standardized, allowing for comparisons with other market participants and historic data. In contrast, the parties' Weighted TME Trend is based on payments from fewer payers, covers fewer members within those payers, and includes fewer payments associated with those members.

The parties' Weighted TME Trend is limited to a subset of Partners' Commercial Risk Business.[6] As the Health Policy Commission noted in its comments to the Court on the proposed

[6] The proposed Consent Judgment calls for measuring and monitoring TME for the risk-based business associated with HMO and HMO-like products from the top three payers (Blue Cross Blue Shield, Harvard Pilgrim Health Care and Tufts Health Plan) and excludes the self-insured commercial business from both Harvard Pilgrim and Tufts. The Health Policy Commission has noted that the proposed TME covers just 11 percent of Partners total commercial

Consent Judgment, limiting monitoring to Commercial Risk Business prevents the Attorney General's Office from monitoring increased spending associated with Partners non-risk business.[7]

Today, TME collected by CHIA includes all Commercial Risk Business from reporting payers, as well as HMO Non-Risk Business. CHIA does not currently separate TME for "Risk" and "Non-Risk" business, but monitoring Partners' HMO Non-Risk Business can only enhance the public interest of the proposed settlement. Limiting Weighted TME Trend measurement to Commercial Risk Business only focuses attention precisely on the services where Partners has the strongest pre-existing incentives to minimize TME growth because the risk arrangements themselves reward Partners financially for limiting such growth. Monitoring Partners' performance with CHIA's TME data for all HMO business, including non-risk business, would provide a clearer view of Partners' overall performance. CHIA's statutorily-defined TME measure also permits comparison to other providers within each payers' network on both unadjusted and health status adjusted bases.

Moreover, CHIA is developing other tools to support TME monitoring. First, CHIA has statutory authority to monitor alternative payment contracts like those underlying Partners' Commercial Risk Business. Second, CHIA plans to begin monitoring TME associated with non-HMO members consistent with the Health Policy Commission's recent recommendation: "[t]o monitor and understand cost trends in the significant and growing PPO segment, CHIA should extend its reporting to include a TME measure for PPO populations that uses an agreed-upon

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business. See *Public Comment by the Massachusetts Health Policy Commission In re Commonwealth v. Partners Healthcare System et al.* ("HPC Comment") at p. 4.

[7] Id. at p. 5.

attribution algorithm to identify accountable provider organizations."[8] Finally, CHIA is working with the Health Policy Commission "to design and evaluate potential measures of contributions to health care spending growth for provider types such as hospitals, specialist physician groups, and others that do not deliver primary care."[9]

CHIA recommends that the final Consent Judgment include the use of statutorily defined, CHIA-calculated TME to supplement Weighted TME Trend. CHIA takes no position on the degree to which growth in TME should be curbed under the terms of a final Consent Judgment. The 'TME Growth Cap' defined in the Consent Judgment could be applied against statutory TME as calculated by CHIA just as easily as against the novel Weighted TME Trend measure proposed by the parties.

III. Public Interest Served by Transparency and Administrative Simplification

The use of statutorily defined and standardized metrics to monitor Partners' compliance with the proposed Consent Judgment serves the public interest by promoting the transparency and administrative simplification envisioned by the legislature with the adoption of Chapter 224 of the Acts of 2012. The development and use of uniformly-applied metrics to evaluate payer and provider performance allow policymakers, regulators and state prosecutors to speak a common language and have a shared understanding of payer and provider actions and how they affect the marketplace. This is evident in the Health Policy Commission's reliance on CHIA data to illustrate its concerns with the proposed Consent Judgment,[10] as well as the Attorney

[8] *2013Cost Trends Report July 2014 Supplement*, p. 48, available at http://www.mass.gov/anf/docs/hpc/07012014-cost-trends-report.pdf

[9] *Id.*

[10] See, e.g. HPC Comment at pp. 7-10

General's Office's own use of the same metrics in its examinations of cost trends.[11] Moreover, the use of standardized metrics by government agencies requesting and analyzing health care data reduces the administrative burden on providers and payers by permitting centralized data collection at CHIA.

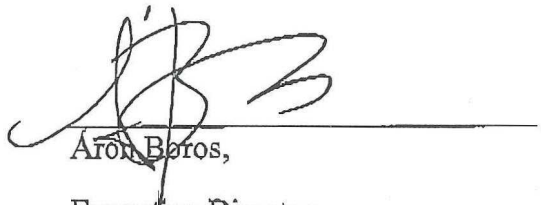
In addition to relying on nonstandard metrics to monitor Partners, the Consent Judgment proposes that data reported by Partners for monitoring purposes will remain confidential. The nonstandard metrics contained in the proposed resolution, and the lack of transparency involved with compliance monitoring, are inconsistent with state health care policy as embodied in Chapter 224, which promotes transparency as a means to decrease health care costs and improve access, quality, and outcomes. The public interest, including public confidence in compliance monitoring, will be better served with the supplemental use of publicly reported metrics to assess Partners' performance.

IV. Conclusion

For all of the reasons described above, CHIA urges the use of the existing public performance measures – notably TME and RP – to supplement the proposed monitoring metrics as part of a robust compliance program that is transparent to the public and takes advantage of the ongoing statutorily required analyses performed by CHIA, the Health Policy Commission, and the Attorney General's Office.

[11] See *e.g.*, *Examination of Health Care Cost Trends and Cost Drivers Report for Annual Public Hearing*, Office of Attorney General Martha Coakley. In addition to using RP and TME to measure and compare provider performance, in this report the Attorney General also urges CHIA to increase the amount and type of standardized reporting it requires of industry in order to promote the goals of Chapter 224.

Respectfully Submitted,



Aron Boros,

Executive Director

Center for Health Information and Analysis

Dated: September 15, 2014